

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

OSVALDO VERDUZCO-  
MENDOZA,

Defendant.

NO. 2:14-cr-00059-JLQ  
2:15-cv-124-JLQ

ORDER GRANTING MOTION TO  
AMEND SENTENCE

BEFORE THE COURT is Defendant Osvaldo Verduzco-Mendoza's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence and/or Motion to Amend Sentence (ECF No. 37). Defendant's Motion contends that the Bureau of Prisons ("BOP") has incorrectly calculated the amount of time served.

On June 6, 2014, Defendant pled guilty to Possession of a Firearm with an Obliterated Serial Number. On August 8, 2014, the court sentenced Defendant to a term of imprisonment of 24-months. It appears from the record that Defendant was arrested on December 10, 2013, and has remained in continuous custody since that time. After the arrest, Defendant was charged with violations of both state and federal law. He was indicted on the federal charges on March 18, 2014. It appears he was sentenced on the state offenses on April 7, 2014, and thereafter went into federal custody.

Defendant was in custody, on the state and federal charges, for approximately 8 months prior to his being sentenced by this court. His contention is that the BOP has allowed approximately 4 months credit for time served, rather than 8 months. From the documents submitted by Defendant, it appears the BOP gave "jail credit" for December

1 10, 2013 to April 6, 2014, but not for the subsequent four months prior to Defendant's  
2 federal sentencing on August 8, 2014.

3 The Government has filed a Response (ECF No. 41) and does not oppose the 4-  
4 month reduction. The Government states that at the August 8, 2014 sentencing there was  
5 a joint recommendation from the parties that the Federal sentence run concurrent with the  
6 State sentence. The Government further states: "If this Court's intent was to follow the  
7 joint recommendation of the parties that the state and Federal sentence run concurrently  
8 with each other, the United States is of the opinion that the Defendant can be given credit  
9 for time served between April 6, 2014, through August 8, 2014." (ECF No. 41, p. 2-3).  
10 That was the intent of the court, and that intent is clearly expressed in the Judgment. (ECF  
11 No. 34, p. 2)("Sentence to run concurrently with sentence imposed by Chelan County  
12 Superior Court...").

13 The Presentence Report in this matter states in part: "Osvaldo Verduzco-Mendoza  
14 was arrested relative to the conduct that constitutes the instant federal offense on  
15 December 10, 2013." (ECF No. 31 at ¶ 1). Defendant was in custody for approximately 8  
16 months prior to being sentenced by this court to 24-months on August 8, 2014. He  
17 received credit by the BOP for time served for approximately 4 months, when he should  
18 have received credit for approximately 8 months. Defendant can receive this credit, even  
19 though he was in state custody for a portion of this time. See *Schleining v. Thomas*, 642  
20 F.3d 1242, 1245 n. 2 (9<sup>th</sup> Cir. 2011)("18 U.S.C. § 3585(b) allows the Bureau of Prisons to  
21 grant a federal prisoner credit for time served in state or federal custody before imposition  
22 of the federal sentence, but only if that term of pre-sentence imprisonment has not been  
23 credited against another sentence.")

24 **IT IS HEREBY ORDERED:**

25 1. Defendant's Motion (ECF No. 37) is **GRANTED**.  
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1           2. The Bureau of Prisons is directed to give Defendant additional credit for time  
2 served on the sentence imposed herein for the period of April 7, 2014 to August 8, 2014,  
3 approximately four months.

4           3. Defendant's current anticipated release date as reflected in the documents he  
5 submitted, and on the BOP website at [www.bop.gov](http://www.bop.gov) is January 8, 2016. The court thus  
6 anticipates that with the additional credit for time served, the release date may be as early  
7 as September, 2015.

8           **IT IS SO ORDERED.** The Clerk is hereby directed to enter this Order and furnish  
9 copies to counsel and the United States Probation and United States Marshal's office who  
10 shall furnish a copy to the United States Bureau of Prisons.

11           **DATED** this 27<sup>th</sup> day of July, 2015.

12                               s/ Justin L. Quackenbush  
13                               JUSTIN L. QUACKENBUSH  
14                               SENIOR UNITED STATES DISTRICT JUDGE  
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